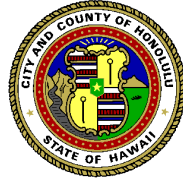


**ETHICS COMMISSION**  
**CITY AND COUNTY OF HONOLULU**

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KIRK CALDWELL  
MAYOR

CHARLES W. TOTTO  
EXECUTIVE DIRECTOR &  
AND LEGAL COUNSEL

**Advisory Opinion No. 2015-1**

**I. SUMMARY**

The Honolulu Ethics Commission (“Commission” or “EC”) found that the Mayor may use city resources to support the “Keep Hawaii’s Heroes” project because supporting such a program is within the implicit or explicit scope of the Mayor’s duties. The Mayor has broad authority in regard to the submitting and justifying the city’s budget to the City Council. The Mayor also has broad authority to inform the public as to city policies and programs. The issue of military downsizing in Honolulu creates a significant impact on Honolulu’s economy which will affect the city’s budget and ability to provide services. As such, the Mayor has the inherent authority to address this issue and implement a policy regarding this issue including asking for public support for the Project.

Further, the Commission has long-held that there is an exemption to Revised Charter of Honolulu Sec. 11-104<sup>1</sup> for helping non-profit organizations with projects that the Mayor has officially designated as a project with community –wide benefit such as Aloha United Way and Foodbank. The “Keep Hawaii’s Heroes” project likely falls within this exemption as the co-sponsor of the project is the Hawaii Chamber of Commerce, a 501(c)(6) non-profit organization and the project would affect a broad segment of the community.

**II. FACTUAL BACKGROUND**

“Keep Hawaii’s Heroes” is a project co-sponsored by the City and the Hawaii Chamber of Commerce, a non-profit 501(c)(6) organization (“Project”). The Project was initiated in order to obtain signatures for a petition to “save the communities from the downsizing of Schofield Barracks and Fort Shafter.” According to information on the Keep Hawaii’s Heroes website, the proposed downsizing of Schofield Barracks and Fort Shafter would eliminate 20,000 soldiers and 30,000 civilians which would result in a 38% reduction in the surrounding populations of

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<sup>1</sup> RCH Sec. 11-104 provides: “Elected or appointed officers or employees shall not use their official positions to secure or grant special consideration, treatment, advantage, privilege or exemption to themselves or any person beyond that which is available to every other person.”

Wahiawa, Waialua, Schofield, Mililani and Kunia. Further, the downsizing would also eliminate 20,000 jobs and reduce Honolulu's economy by \$1.35 billion.<sup>2</sup>

On or about December 9, 2014, Ray Soon, Chief of Staff, Office of the Mayor distributed a Memorandum encouraging city employees to sign and circulate the petition as well as post information regarding the Project in city offices.

On or about December 22, 2014, staff received an oral complaint by Mr. Al Frenzel, Director, Oahu Council for Army Downsizing, that the Mayor was improperly directing city resources to support the Project.

The next day, staff responded to Mr. Frenzel stating that after receiving proper documentation from the Mayor's Office showing co-sponsorship of the Project, that the Mayor was acting within his authority and the city's ethics laws to support this Project. This was because it qualified as a "project with community-wide benefit" exemption to the general law that no city resources may be used for non-city purposes. Revised Charter of Honolulu ("RCH") Sec. 11-104.

On or about January 5, 2015, Mr. Frenzel disagreed with staff's informal advisory opinion and requested that the Ethics Commission make a formal advisory opinion on this issue.

The Commission heard this matter at its meeting on February 18, 2015.

### **III. DISCUSSION AND ANALYSIS**

#### **A. City Officers May Use City Resources for Purposes that are Within the Implicit or Explicit Scope of their Official City Duties.**

City officers and employees are prohibited from using city resources for non-city purposes. RCH Sec. 11-104. A violation of this law occurs when a city officer or employee appropriates a city resource for a non-city use which is, "a use not within the scope or duties expressly or implicitly associated with the position of the city officer or employee whose conduct is in question." Advisory Opinion No. 2005-4 (Jul. 18, 2005) citing Advisory Opinion No. 2002-2 (Sep. 6, 2002).

The Mayor is the chief executive officer of the city. RCH Sec. 5-103.<sup>3</sup> The Mayor has the power to "submit an operating and capital program and budget and necessary proposed

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<sup>2</sup> Staff has not performed independent research on the effect of the proposed army downsizing and is basing its information solely on what has been provided to staff by Mr. Frenzel, city administration, and what is available through the Project website maintained by the Hawaii Chamber of Commerce (keephawaiiheroes.org).

<sup>3</sup> RCH Sec. 5-103 provides in pertinent part: "The mayor shall be the chief executive officer of the city."

budget ordinances annually to the council for its consideration and necessary action.” RCH Sec. 5-103(g).<sup>4</sup> The Mayor also has the power to “make periodic reports informing the public as to city policies, programs and operations.” RCH Sec. 5-103(j).<sup>5</sup>

The Commission previously reviewed the scope of a Mayor’s duties based on the language in the Revised Charter of Honolulu. In Advisory Opinion No. 2002-2 (Sep. 6, 2002), the Commission found that the use of city resources by members of city administration to notify the public of potential budget cuts and to request their participation in the debate of the fiscal year 2003 budget did not violate RCH Sec. 11-104. This was because the city budget is essential to the function of the city government, it is inherent that the executive branch may establish policies and programs on issues that would affect Honolulu’s economy. *Id.* See also Advisory Opinion No. 2005-4 (Jul. 18, 2005) (finding that use of city funds to publish the book Renaissance of Honolulu detailing the transitions that occurred during the Harris administration fell under the mayor’s broad authority to make periodic reports informing the public of the city’s programs.); Advisory Opinion No. 2009-6 (finding that the mayor had authority to publish and distribute non-partisan rail transit brochure prior to November 2008 election which included a ballot measure on rail transit because the mayor has implied power to spend public funds to inform and educate the public about matters of public concern, including matters that are subject to a vote).

Here, the Mayor is within the scope of his broad budget and policy making authority to co-sponsor the Program. As previously stated, the proposed downsizing of Schofield Barracks and Fort Shafter would eliminate 20,000 soldiers and 30,000 civilians which would result in a 38% reduction in the surrounding populations of Wahiawa, Waialua, Schofield, Mililani and Kunia. Further, the downsizing would also eliminate 20,000 jobs and reduce Honolulu’s economy by \$1.35 billion. It appears that there would be a significant impact on Honolulu’s economy and as a result also impact the city administration’s decision on budget issues. The Mayor is within his authority to use city resources to share this information with the public and encourage participation in the Project to mitigate the economic effect on Honolulu.

**B. City Resources May Be Used to Assist a Non-Profit Organization with an Officially Designated Project with Community Wide Benefit.**

The Commission has long-recognized the project with community wide benefit exception to RCH Sec. 11-104. Specifically, this exemption has been identified by the Honolulu Ethics Commission in its Guidelines on the Use of City Resources at 5 (rev. Oct. 9, 2007):

The “project with community-wide benefit” exception recognizes that there are non-profit and charitable organizations that sometimes rely on government

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<sup>4</sup>RCH Sec. 5-103(g) provides: The mayor shall have the power to: submit an operating and capital program and budget and necessary proposed budget ordinances annually to the council for its consideration and necessary action.

<sup>5</sup>RCH Sec. 5-103(j) provides in pertinent part: “The mayor shall have the power to: In addition the annual report, make periodic reports informing the public as to city policies, programs and operations.”

support. When the Mayor or Council Chair (or department head in the case of the Police Department, Department of the Prosecuting Attorney or Fire Department) officially designates a particular non-profit or charity event or project as having a community-wide benefit, city resources may be used, with appropriate approval, to support these groups. The Food Bank, Aloha United Way and March of Dimes are a few of the charities that have been designated as offering projects with a community-wide benefit in the past.

In order to qualify as a “project with community-wide benefit” the city official must be able to verify that the activity is on behalf of a non-profit or charitable organization, and provides benefits to a broad segment of the community. Advisory Opinion No. 2010-1, at 3 (Mar. 3, 2010). *See also* Hawaii State Ethics Commission Opinion No. 245 (Mar. 19, 1976) (use of state resources as designated by the governor for the solicitation of funds for a charitable organization was proper under state ethics law.)

The Project qualifies as a “project with community-wide benefit” as it is on behalf of the Hawaii Chamber of Commerce, a 501(c)(6) non-profit organization, and provides benefits to a broad segment of the community as a whole due to the billion dollar decrease in the economy and especially to the communities surrounding the bases which would lose almost 40% of its residents.

#### **IV. CONCLUSION AND RECOMMENDATION**

The Commission finds that the Mayor was within his authority to co-sponsor the Project and that the Project falls within the exemption to RCH Sec. 11-104 as a project with community-wide benefit.

DATED: March 18, 2015

APPROVED:

/s/Katy Y. Chen  
KATY Y. CHEN, Chair

APPROVED AS TO FORM:

/s/Charles W. Totto  
CHARLES W. TOTTO  
Executive Director and Legal Counsel